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NOV 23 2004

OFFICE OF PETITIONS

In re Application of
Frye and Huitt
Application No. 09/912,009
Filed: July 24, 2001
Attorney Docket No. 38, 146
For: RF Multiple Load Cell Scale

DECISION REFUSING TO
ACCORD STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed January 8, 2002. The Office is also *sua sponte* treating the paper as a request under 37 CFR 1.181 to accord the application a filing date of July 24, 2001.

The petition under 37 CFR 1.47 is **dismissed**.

The petition for a filing date under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.47:

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

It should first be noted that the inventors of record are:

- (1) Craig Frye, and
- (2) Bruce Huitt.

Since Kenneth Bauman cited in the petition is not listed on the declaration, he is not an inventor of record.

The petition is being treated as a request to accept the declaration without the signature of inventor Bruce Huitt.

A grantable petition under 37 CFR 1.47(a) requires

- (1) proof that the non-signing inventor cannot be found or reached after diligent effort or that the inventor refuses to sign after having been presented with the application papers (specification, claims, and drawings),
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

In addition to the above requirements, the signing inventors must sign the declaration on behalf of the non-signing inventor. See MPEP 409.03(a).

The instant petition fails to satisfy (1) and (2).

As to (1), petitioner has failed to provide any evidence to establish that Huitt cannot be found or refuses to sign the declaration. The petition simply states Huitt is unavailable to sign the declaration.

As to (2), the changes were made to the information for Huitt on the declaration without any indication whether or not the changes were made before or after Frye signed the declaration. A new declaration signed by Frye on Huitt's behalf or by Huitt should be submitted.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street South
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

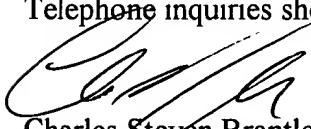
The petition under 37 CFR 1.181:

The application was filed on July 24, 2001.

Upon submission of the petition under 37 CFR 1.47, the Office incorrectly changed the filing date to January 8, 2002. The reason for the change is unknown.

The filing date will be corrected to indicate a filing date of July 24, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions